IN THE UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN THE MATTER OF THE COMPLAINT OF:	)
	) Case No.: 4:15-cv-01111
CENTRAL CONTRACTING & MARINE, INC.,	)
for Exoneration from, or Limitation of, Liability.	)

MEMORANDUM OF LAW IN SUPPORT OF CLAIMANTS' MOTION TO INCREASE LIMITATION FUND

The Limitation Fund substitute security that the Plaintiff Central Contracting & Marine, Inc. seeks to deposit with this Court is insufficient and in violation of the maritime Flotilla Doctrine. Before any Limitation Fund is approved (assuming of course that the Plaintiff's Complaint for limitation of or exoneration from liability is sustained), the Limitation Fund or its substitute must be increased so as to include the independently appraised, fair market value of all vessels and equipment (a) owned by Plaintiff and/or its constituent coventurers, and (b) engaged in the common enterprise of Plaintiff's trip at the time of the July 16, 2015 accident, and (c) under the common command of Plaintiff and/or its agents, regardless of whether these vessels and equipment were actually involved in the accident itself.

"An owner seeking to invoke the Act must petition the district court for a limitation of liability and must deposit with the court an amount equal to the value of his interest in the vessel and its freight or give security for such value." *In re MO Barge Lines, Inc.*, 360 F.3d 885, 890 (8th Cir. 2004). Under Fed.R.Civ.P.Supp. F(7), a claimant in a ship owner's limitation of liability action may move the Court to require the plaintiff ship owner to increase the Limitation Fund so as to include the value of any and all vessels owned by the ship owner which were engaged in a common enterprise (i.e., the ship owner's "flotilla").

> The limitation process usually commences with the vessel owner depositing with the court cash, a security bond, or other security (with court approval) equal to the value of the vessel. If any claimant disputes the sufficiency of the "limitation fund," s/he may move the district court to increase the amount of the fund. The district court, after a hearing, may require a modification of the fund amount. *See, Luhr Bros., Inc. v. Gagnard*, 765 F.Supp. 1264, 1268-69 (W.D.La. 1991); 46 U.S.C.App. § 185.

In re Am. Milling Co., Unlimited, 125 F.Supp.2d 981, 984-85 (E.D.Mo. 2001), affirmed in part, reversed in part on other grounds, 409 F.3d 1005 (8th Cir. 2005), *rehearing and rehearing en banc denied* (June 21, 2005).

Where the employer-ship owner owns and directs the operation of other vessels employed in the same enterprise as the vessel(s) involved in the accident, then the Flotilla Doctrine demands that the value of all such commonly owned vessels be included in the Limitation Fund. The Flotilla Doctrine applies where three factual components are found:

> Under the flotilla doctrine, the value of all the vessels involved in the completion or performance of a contract must be surrendered to a limitation fund when those vessels are: [1] subject to common ownership; [2] engaged in a single enterprise; and [3] under a single command.

Valley Line Co. v. Ryan, 771 F.2d 366, 376 (8th Cir. 1985) (bracketed numbers added). Therefore, in factual scenarios where, for instance, an employer involved in a bridge construction project owns a variety of vessels employed by the company to transport workers to the job site, uses barges as floating platforms to support cranes, rescue boats, tugs or push boats to maneuver barges, etc…, so long as this fleet is (1) owned by the company, (2) engaged in the same construction project, and (3) under the control of the owner-company, then the flotilla doctrine applies so as to add the value of the whole corporate "flotilla" to the Limitation Fund.

One recent case applying the Flotilla Doctrine from a federal district court in Florida is particularly instructive, given that the employer-ship owner was a construction contractor utilizing multiple vessels in a bridge construction project, as under the present facts, and the court applied the same three-part test for invoking the Flotilla Doctrine as stated in the 8th Circuit case *Valley Line*, 771 F.2d 366, citing *Valley Line*, found that the Flotilla Doctrine applied to enlarge the Limitation Fund to encompass the value of all vessels employed by the contractor-employer in the same bridge construction project, where all the vessels were owned by the company, and under the supervision of the company's project manager.

> The flotilla doctrine has not been limited to cases involving shipping contracts. At least since *Standard Dredging Co. v. Kristiansen*, 67 F.2d 548 (2d Cir.), *cert. den*, 290 U.S. 704, 54 S.Ct. 372, 78 L.Ed. 605 (1933), the doctrine has been applied as well to personal injury claims by employees against employer/owners. . . .
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> . . . .
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> It is undisputed that [the] claimant . . . was an employee of Quinn and was involved in the bridge project at the time of his alleged injury. . . . Thus, there is a contractual employer-employee relationship sufficient to invoke the flotilla doctrine. . . .
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> In determining whether a particular vessel is part of the "common venture," . . . . courts look to a three-part test: (1) common ownership; (2) common enterprise; and (3) single command. *Valley Line*

> *Co. v. Ryan*, 771 F.2d 366, 376 (8th Cir. 1985); *Cenac Towing Co. v. Terra Resources, Inc.*, 734 F.2d 251, 254 & n. 4 (5th Cir. 1984).
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> . . . .
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> Although a close call, the barge . . . would appear to be part of the limitation fund under the three-part test of *Valley Line* and *Cenac Towing*. Clearly, there is an identifiable *common enterprise* under these facts: that of *repairing the B.B. McCormick Bridge.* Both the tug and the barge were involved in this enterprise—the tug transported the barge and the workers to and from the bridge repair site each day, and the barge was the site of the crane used in the operation. . . . Secondly, there appears to be *common ownership* . . . . [as *employer*] *Quinn has essentially conceded it is the owner of the barge* for purposes of 183. . . .
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> . . . .
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> [And t]he element of single command is present in this case . . . . [because] Quinn was the contractor on the bridge repair project, and George Argueta was [Quinn's] project supervisor. . . . Accordingly, both the tug and barge were under the single command of Mr. Argueta on behalf of Quinn for the duration of this project.
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> Accordingly, both the tug and barge were under the single command of Mr. Argueta for purposes of the flotilla doctrine.

Tom Quinn, 806 F.Supp. at 947-50 (emphasis added).

Note too that the "engaged in a single enterprise" refers to a common business venture, not a specific daily task. *See, e.g. Brown & Root Marine Operators v. Zapata Off-Shore Co.*, 377 F.2d 724, 727 (5th Cir. 1967). ("While it is true . . . that the Flotilla Doctrine will apply when the vessels are physically bound together . . . the doctrine is by no means limited to such factual circumstances. The test is "devotion to a single venture.")

With respect to the "single command" requirement, as in *Tom Quinn*, other courts have observed that "command" is not limited to onboard discretion. Rather, a court may go "over the head of the captain of an individual boat in order to establish single command among common management personnel" of the owner company. *Foret v. Transocean Offshore (USA), Inc.* 2011 WL 3818635, *4 (E.D.La. 2011) (quotation formatting and citation omitted) (unreported).

> The requirement of a single command is nautical; it requires a person or captain with the right to control the vessels at issue. However, that person need not be someone providing on-board direction. . . .
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> The Court finds that these three vessels were under the common control of [employer-company] Turn Services's dispatcher . . . . The dispatcher directed the WAR ADMIRAL—as lead fleet boat—which then passed on information to the BLACKBEARD and the OMAHA. It is permissible to go over the head of the captain on an individual boat to find the person or entity with single command.
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> If two vessels share the same management personnel, this is sufficient, even if the captains of each vessel are not the same person. A dispatcher communicating information regarding a particular tow-building job necessarily exercises oversight such that he qualifies as shared vessel-management personnel. *Cf. Matter of Antill Pipeline Constr. Co., Inc.*, 1998 WL 321512, at *2 (E.D.La. June 17, 1998) (supervisor with command of the activities of the vessels at the time of alleged accident); *In re Weeks Marine, Inc.*, 2000 WL 33640134 (M.D.Fla. Nov. 28, 2000); (report and recommendation in case involving superintendent of beach renourishment project with supervision over captains of vessels); *Complaint of Tom Quinn Co., Inc.*, 806 F.Supp. 945, 946, 949 (M.D.Fla. Nov. 17, 1992) (project supervisor exercised single command of tug and barge involved in bridge repair project). The Court finds that the WAR ADMIRAL, the BLACKBEARD, and the OMAHA were under Turn Services's single command.
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> The Court holds that there is sufficient evidence that the WAR ADMIRAL, BLACKBEARD and OMAHA constituted a flotilla. Thus, the Court will require petitioners to increase the security to include the value of petitioners' interest in these three vessels. . . .

In re War Admiral, L.L.C., 2011 WL 5826083, *5-6 (E.D.La. Nov. 18, 2011) (slip) (some quotation formatting and citations omitted). As such, if two vessels share the same management personnel, this may satisfy the flotilla doctrine's single command requirement, even if the captains of each vessel are not the same person. *Foret v. Transocean Offshore (USA), Inc.*, 2011 U.S. Dist. Lexis 96679, at 22 (E.D.La. 2011); *see also Foret* at 25-26 ("single command is not, in fact limited to on-board discretion, but may instead be established by common management personnel").

Therefore, at issue before this Honorable Court is only whether these three elements in fact have been met. If the Court finds that they have, the Limitation Fund should be increased to encompass the value of all vessels employed by Central Contracting & Marine, Inc. in the contract and/or transportation taking place at the time of the accident. The identity, ownership and valuation of this "flotilla" will necessarily have to be developed through discovery, and through independent appraisals ordered by this Court.

CONCLUSION

The Flotilla Doctrine clearly applies in this case, just as it did regarding all the vessels employed in the bridge construction project in *Tom Quinn*, 806 F.Supp. 945. The various vessels (including, but not limited to, tug boats, push boats, barges, transport vessels, rescue boats, etc. . .) and related equipment owned, operated, and commanded by employer-ship owner Central Contracting & Marine, Inc., Plaintiff in this action, constitute a "flotilla" for purposes of limitation of liability.

Therefore, pursuant to Fed.R.Civ.P., Supplemental Rules for Certain Admiralty and Maritime Claims Rule F(7), should this Court rule that the Plaintiff here may limit its liability, the value of any Limitation Fund approved by this Court should be increased to include the value of all vessels owned by Central Contracting & Marine, Inc. and operated in the furtherance of the enterprise being conducted on July 16, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2015, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/Matthew J. Padberg